

**ALGEBRA II END-OF-COURSE EXAM**  
**MULTISTATE PROCUREMENT**  
**PARTICIPATION AGREEMENT**

This Participation Agreement (the "Agreement") is made and effective as of this \_\_\_\_ day of November, 2006, (the "Effective Date") by and between the State of Arkansas ("Arkansas"), the State of Indiana ("Indiana"), the Commonwealth of Kentucky ("Kentucky"), the State of Maryland ("Maryland"), the Commonwealth of Massachusetts ("Massachusetts"), the State of New Jersey ("New Jersey") the State of Ohio ("Ohio"), the Commonwealth of Pennsylvania ("Pennsylvania"), and the State of Rhode Island ("Rhode Island").<sup>1</sup>

As part of the American Diploma Project ("ADP"), the States desire to participate together in a multi-state cooperative procurement to purchase a common End-of-Course Exam for Algebra II that will improve curriculum and instruction, enable comparisons in achievement among the states, and provide an indicator of college-readiness that could be used for placing students into credit-bearing courses. Towards these ends, the States agree as follows:

**1. Definitions.**

- 1.1. "Chief State School Officer" means the commissioner, director, superintendent, or head of the agency or department of each State responsible for elementary and secondary education policy.
- 1.2. "Contract" means the contract for the Algebra II End-of-Course Exam and related services awarded through the Procurement contemplated by this Agreement.
- 1.3. "Exam" means the Algebra II End-of-Course Exam contemplated by this Agreement.
- 1.4. "Lead State" refers to the individual state responsible for conducting the Procurement and contracting with the vendor, which at present is the State of Ohio.
- 1.5. "Procurement" means the multi-state procurement of the Exam and related services contemplated by this Agreement.
- 1.6. "RFP" means the Request for Proposals for multi-state procurement of the Exam.

**2. Coordination and Direction Team.**

- 2.1. **Duties.** The States hereby establish the Coordination and Direction Team ("CDT"), which shall have the following responsibilities and duties:

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<sup>1</sup> For the purposes of this agreement, (Indiana, Kentucky, Maryland, Massachusetts, New Jersey, Ohio, Pennsylvania, and Rhode Island may sometimes be referred to individually as a "State" and collectively as the "States". For the purposes of this agreement, the States may sometimes be referred to individually as a "Party" and collectively as the "Parties."

- A. In conjunction with the Lead State, coordinate and participate in the source selection process for the Procurement;
- B. Evaluate proposals submitted in connection with the Procurement consistent with this Agreement and the requirements of the RFP;
- C. Recommend make the final source selection decision and document the supporting rationale before contract award;
- D. Oversee the performance of the Exam contractor selected in the Procurement;
- E. Direct activities of Achieve, Inc. and any other retained consultants or advisors related to the Procurement and the Contract;
- F. Provide advice, direction, and decisions on behalf of the States collectively as may be requested by the Lead State in connection with the Procurement or Contract;
- G. Generally represent the States in connection with the Procurement and Contract; and
- H. Take any other actions reasonably necessary to accomplish the purposes of this Agreement.

**2.2. Composition.** The CDT shall be composed of the Chief State School Officer of each State or his/her designee authorized to represent and act on behalf of such Chief State School Officer. Each State's representative on the CDT shall be an individual with authority to act and make decisions on behalf of that State with regard to matters within the purview of the CDT.

**2.3. CDT Chair and Vice Chair.** The CDT shall appoint one of its members to serve as a Chair, and a different member to serve as a Vice Chair. The CDT Chair shall have the duties and responsibilities set forth in this Agreement, including without limitation the following:

- A. Direct and oversee meetings of the CDT;
- B. Coordinate CDT activity and responsibilities in connection with the Procurement and subsequent Contract administration;
- C. Serve as a spokesperson for the CDT;
- D. Act as CDT's liaison with the Lead State, the contractor under the Contract, Achieve, Inc., and others;
- E. Identify policy issues and major questions requiring a decision by the CDT; and

- F. Call meetings of and set meeting agendas for the CDT as appropriate to conduct business.

The Vice Chair will assist as directed by the Chair and shall have the same duties as the Chair in the event that the Chair is unable to carry out those duties or is recused for any reason.

- 2.4. **Meetings.** The CDT shall meet at such times and places as may be called by the Chair, Vice-Chair, or the Administrator upon written notice provided to each member at least 72 hours prior to the call. The CDT may hold meetings by teleconference whereby all CDT members participating in the meeting may hear each other at the same time, and participation in such meeting shall constitute presence in person by such member at such meeting. Notice of meetings of the CDT may be sent to members via U.S. mail, facsimile transmission, or electronic mail.

**2.5. Quorum and Voting.**

- A. A quorum shall consist of two-thirds of the CDT members.
- B. Meetings may be conducted, and CDT members may attend meetings, by means of telephone or video conference.
- C. Unless otherwise specifically provided herein, a majority vote shall govern. No member shall vote by proxy.
- D. The Chair or Vice-Chair may request action by the CDT between meetings of the CDT by mail or e-mail vote..
- E. Proposed actions by the CDT that involve any of the following require unanimous Agreement of the CDT members to be effective:
  - i. Amendments to the Contract awarded as a result of the Procurement;
  - ii. Replacement of the Lead State.

- 2.6. **Committees.** The CDT may appoint such committee or committees as it may deem advisable and with such limited authority as the CDT shall from time to time determine.

**3. Lead State.**

- 3.1. As of the Effective Date of this Agreement, the State of Ohio has agreed to serve as the Lead State.
- 3.2. The Lead State shall have the duties and responsibilities set forth in this Agreement, including without limitation the following:

- A. Appointing a contracting officer to conduct the Procurement in accordance with the RFP, this Agreement, and the applicable law of the Lead State;
  - B. Conduct the Procurement in accordance with the RFP, this Agreement, and the applicable law of the Lead State;
  - C. Provide guidance to the CDT as required;
  - D. In coordination with the CDT, Administer the Contract after award. Each State, however, will be solely responsible for administering its own purchases, if any, under the Contract.
- 3.3. The Lead State may resign upon 30 days written notice to the CDT. Upon receipt of a notice of resignation from the Lead State, the CDT shall solicit another State to serve as the replacement Lead State. Upon the resignation of the Lead State, such Lead State shall assign all contracts and other rights and obligations related to the Procurement to the replacement Lead State as designated and agreed to by the CDT.
4. **Expenses.** Except as otherwise expressly provided in this Agreement, each Party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution and performance of this Agreement and the transactions contemplated hereby; and, no Party shall have any right to reimbursement or compensation of any kind from the other in connection with this Agreement and the activities pursued hereunder.
5. **Ownership of Exam Results.** In the event that the Procurement contemplated by this Agreement results in the award of a Contract for the Exam each State shall own the Exam results received from the contractor from Exams administered by the contractor pursuant to the Contract.
6. **Term, Termination, and Withdrawal.**
- 6.1. Except as expressly provided in § 6.4, this Agreement and all rights, duties, and obligations provided for herein shall automatically terminate without any further action of either Party upon the earliest occurrence of any of the following:
- A. Written notice from the CDT that the Procurement has been canceled;
  - B. If a Contract for the Exam is awarded, the termination or expiration of such Contract; or
  - C. Written agreement of all Parties to terminate this Agreement.
- 6.2. Any State may withdraw from this Agreement at any time and for any reasons, provided that, upon such withdrawal, such State shall not issue any additional task orders under the Contract for the Exam.

- 6.3. The CDT may terminate this Agreement with respect to any Party upon the failure by a Party to perform or comply with any of its material covenants or obligations contained in this Agreement and such failure is not remedied and cured in all material respects within fifteen (15) days after the date written notice of such failure is delivered to such Party by the CDT. Upon a termination for default under this Section 6.3, the terminated Party shall not issue any additional task orders under the Contract for the Exam.
- 6.4. Notwithstanding anything herein to the contrary, the following provisions shall survive the expiration or termination of this Agreement: Sections 4 (Expenses), 5 (Ownership of Exam Results), and 7 (General Provisions). All obligations of the Parties that have accrued before termination, or are of a continuing nature, will also survive termination.

7. **General Provisions.**

- 7.1. **No Third Party Rights.** Nothing expressed or referred to in this Agreement will be construed to give any person, other than the Parties to this Agreement, any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement.
- 7.2. **Nature of Relationship.** This Agreement is not intended to establish any partnership, joint venture, employment or franchise relationship between or among the Parties. Except as otherwise expressly provided in this Agreement, no Party will have the power to bind or incur obligations on behalf of any other Party without such Party's prior written consent.
- 7.3. **Amendments.** No part of this Agreement, including this paragraph, may be waived, amended, or modified in any way except by a writing signed by all Parties.
- 7.4. **Recitals.** The Parties agree that the recitals set forth herein are incorporated into and made part of this Agreement.
- 7.5. **Assignment.** No State may assign its rights and obligations under this Agreement or otherwise delegate any of its performance obligations under this Agreement without the prior written consent of all of the other Parties, which may be withheld for any reason. Any purported assignment of rights or delegation of performance obligations in violation of this Section is void.
- 7.6. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Execution may be effected by delivery of facsimiles of signature pages.

8. **Authority.** Each Party represents, warrants and covenants that the execution, delivery and performance of this Agreement by the Party has been duly authorized by all

necessary internal action on the part of the Party and will not violate any applicable laws or any order, judgment or decree of any governmental authority binding on the Party.

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